

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

STEVE ADAMS,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	2:06-cv-00707-ID-CSC
)	
MERCHANTS FOODSERVICE, et al.,)	
)	
Defendants.)	

**DEFENDANT MERCHANTS FOODSERVICE’S MOTION
TO SUBMIT A REVISED DECLARATION OF ANDY MERCIER IN
SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant Merchants Foodservice (“Merchants Foodservice” or “defendant”) moves the Court to allow it to submit the revised declaration of Andy Mercier (copy attached hereto) in support of its Motion for Summary Judgment, for the following reasons:

1. Paragraph 6 of Andy Mercier’s declaration that was originally submitted in support of its Motion for Summary Judgment provides that:

At the time of his discharge as Operations Manager in the Clanton facility on March 29, 2004, Todd Brooks was being paid \$45,000 a year, and in 2003, he received a bonus of approximately 26% of his salary.

2. In preparing the declaration, Andy Mercier provided the incorrect salary amount for Todd Brooks, based on information that he believed at the time to be accurate. The correct salary amount was recently discovered by defendant in

gathering documents in response to plaintiff's discovery requests. Instead of making \$45,000 a year at the time of his discharge, Todd Brooks was making \$54,600 a year. As a result, Todd Brooks received a bonus of approximately 22% of his salary in 2003 instead of a bonus of approximately 26% of his salary. Therefore, paragraph 6 of Andy Mercier's revised declaration provides as follows:

At the time of his discharge as Operations Manager in the Clanton facility on March 29, 2004, Todd Brooks was being paid \$54,600 a year, and in 2003, he received a bonus of approximately 22% of his salary.

3. The revised declaration of Andy Mercier does not affect a material fact. Therefore, plaintiff will not be prejudiced by allowing defendant to submit the revised declaration of Andy Mercier in support of its Motion for Summary Judgment.

For these reasons, defendant Merchants Foodservice respectfully requests that the Court permit it to submit the revised declaration of Andy Mercier in support of its Motion for Summary Judgment.

Respectfully Submitted,

/s/ J. Tobias Dykes

J. Tobias Dykes (Bar No.: DYK002)
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1819 Fifth Avenue North
Birmingham, AL 35203
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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Derrick Blythe, Esq.
126 Marshall Street
Alexander City, AL 35010

This 21st day of September 2007.

/s/ J. Tobias Dykes

J. Tobias Dykes

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REVISED DECLARATION OF ANDY MERCIER

My name is Andy Mercier. I have been President and Chief Executive Officer for Merchants Foodservice since October 2006. I am aware of the lawsuit filed by Steve Adams, and this Declaration is based on my personal knowledge.

1. Merchants Foodservice operates state-of-the-art distribution and warehousing centers in Clanton, Alabama and Jackson, Mississippi.

2. Merchants Foodservice is a 103 year old company headquartered in Hattiesburg, Mississippi.

3. I consider Merchants Foodservice to be family oriented. The company is a family owned business, and I am proud that Merchants Foodservice is family oriented. I told Mr. Adams during his interview that Merchants Foodservice was family oriented.

4. Each distribution and warehousing center has a General Manager, who is responsible for the entire center, an Operations Manager, who is responsible for the day and night shifts in the warehouse and transportation, an Inventory Control Manager, who is responsible for inventory on the day shift, a Transportation Manager, who is responsible for transportation, and a Night Manager, who is responsible for the night shift in the warehouse.

5. Merchants Foodservice opened a new facility in Clanton in July of 2000.

6. At the time of his discharge as Operations Manager in the Clanton facility on March 29, 2004, Todd Brooks was being paid \$54,600 a year, and in 2003, he received a bonus of approximately 22% of his salary.

7. The new operations manager hired in August 2004 would inherit a stable management staff because, Randy Harrington, Inventory Control Supervisor, had worked for the company since December 12, 2001, Jason Kelley, Transportation Manager, had been with the company since November 16, 2000, and Phillip Stitt, Night Manager, had worked for the company since February 9, 1997. Rodney Ware had been night shift supervisor since April 23, 2000 and Sineca Kennsey was a day shift supervisor and had worked for the company since November 16, 2001.

8. Additionally, turnover among hourly employees in the food distribution business is high, and the Clanton facility was no exception to the industry norm. Further, there was a strong core of hourly employees in the warehouse and a good core of drivers in the Clanton facility. Stitt, as Night Shift Manager, received a bonus of approximately 20% of his salary in 2003 and was on pace to receive a bonus of 13-15% of his salary in 2004.

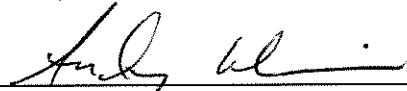
9. Moreover, sales in the Clanton facility rose from \$53,518,040 in 2002 to \$60,586,751 in 2003 and were continuing to rise in 2004.

10. The facility consistently performed well on AIB (American Institute of Baking) Audits, which are bi-annual food safety audits conducted by professionally trained auditors to ensure compliance with food safety regulations and to ensure that Merchants Foodservice provides safe, high quality food products to consumers. The Clanton facility received a Superior rating on its May 22, 2002 audit, a Superior rating on its October 11, 2002 audit, an Excellent rating on its May 22, 2003 audit, a Superior rating on its January 16, 2004 audit, and a Superior rating on its August 31, 2004 audit. (The AIB Audits are attached as Exhibits 1-5).

11. As Operations Manager, Mr. Adams had the authority to discipline the employees who reported to him, and I told him to discipline and/or discharge managers that were not performing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17 day of September, 2007.



Andy Mercier